

AMENDMENT

It is agreed by and between the State of Vermont, Department of Vermont Health Access (hereafter called the "State") and University of Vermont (hereafter called the "Contractor") that the contract on the subject of special programs and Medicaid clinical management, effective October 1, 2012, is hereby amended effective February 28, 2014 as follows:

1. By deleting on page 1 of 31 of the base agreement, and as previously amended, Section 3 (Maximum Amount) and substituting in lieu thereof the following:

3. Maximum Amount. In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$1,792,437.02.

2. By deleting on page 1 of 31 of the base agreement, Section 4 (Contract Term) and substituting in lieu thereof the following:

4. Contract Term. The period of the Contractor's performance shall begin on October 1, 2012 and end on June 30, 2015.

3. By deleting beginning on page 3 of 31 of the base agreement, and as previously amended, Attachment A (Specifications of Work to be Performed) and substituting in lieu thereof the following Attachment A:

ATTACHMENT A

SPECIFICATIONS OF WORK TO BE PERFORMED

I. CONTRACTOR DUTIES

A. Contract Liaison

The Contractor will assign one liaison for the State to contact to ensure the assignment of necessary personnel and resources, and to coordinate and manage the activities related to the implementation and management of this contract.

B. State Chief Medical Officer and State Medicaid Medical Director

1. Responsibilities

Contractor will recruit, hire, and employ two qualified physicians subject to the approval of the Department of Vermont Health Access (DVHA): one to serve as State's Chief Medical Officer (CMO) and the other to serve as State's Medicaid Medical Director. Responsibilities for each position are outlined in the Project #1 description.

C. Consultation and Technical Assistance

Consultation and Technical Assistance provided under this section will be defined in terms of individual projects. The Contractor will provide qualified personnel matched to the specific requirements of each approved project.

1. Ongoing Projects

In addition to Project #1 governing CMO and Medicaid Medical Director services, the State has identified and will continue Project #2, as follows:

Use of State pharmacy claims data to evaluate the Vermont Academic Detailing (VTAD) Program, with the goal of determining the impact of the VTAD Program on local prescribing practices. This project is described under Project #2 below.

2. Initiation of New Projects

- a. The State may initiate the process leading to a new project assignment by requesting a proposal from the Contractor. The request will be prepared by the State and will include the following:
 - i. Contact Individual
 - ii. Type of Activity (e.g., Applied Research, Basic Research, Technical Assistance, Training)
 - iii. Project Goal(s)
 - iv. Brief Description of Project
 - v. Project Deliverable(s)
 - vi. Estimated Project Duration/Phasing
 - vii. Description of Expected Timeline of Project
- b. The Contractor may also initiate the process leading to a new project assignment by submitting unsolicited proposals. Unsolicited proposals and proposals prepared by the Contractor in response to the State's requests shall include the following:
 - i. Principal investigator
 - ii. Project title
 - iii. A detailed work plan, including project description, specific activities and deliverables/products
 - iv. Time estimate required to complete the project and project completion date
 - v. The point of contact responsible for the project for the State and the Contractor
 - vi. Identification of where the work will be performed
 - vii. A list of university personnel who will be working on the project and their qualifications
 - viii. Detailed budget including indirect cost rate (in accordance with the approved Contractor DCA rate), stating a maximum cost to complete the project
- c. Areas of Consultation and Technical Assistance may include, but not be limited to:
 - i. Consultation and analysis of health care financing and insurance administration, management operations, and service delivery to produce relevant, research-based information to inform policy, financing and programmatic development for the MCE-related functions of State and the AHS departments that comprise the MCE's healthcare delivery and monitoring system.

- ii. Analysis of business improvement opportunities, including assessment of current operations with options and recommendations for programmatic improvement to maximize efficiency and reduce redundancy.
- iii. Identification of opportunities for collaborative activities with other insurers and other states. The goal would be to gain greater efficiencies in program operations and/or service delivery and explore financing through collaboration.
- iv. Consultation on medically appropriate service delivery options that are concurrently the most cost effective.
- v. Engaging local community practitioners to solicit ideas for program improvement, including innovation, ideas for reducing duplication and eliminating redundancies, and researching areas for improvements in cost-effective service delivery. Practitioners may include but not be limited to physicians, designated agencies, area health education centers, hospitals, etc.
- vi. Research on service delivery and program and service financing.
- vii. Compilation and analysis of data from the State-provided business datasets, including compiling and manipulating large and varied datasets to perform complex utilization tracking, utilization and financial trending, and other administrative data exercises.
- viii. Clinical program design, development, implementation, and evaluation.
- ix. Identifying and assessing new developments and emerging trends in program management and clinical practices and research that would have an impact on program and medical policy and/or costs.
- x. Consultation and assistance with reviewing procedural and drug formulary claims coding and reimbursement.
- xi. Consultation and assistance with reviewing and determining requests for covered and uncovered medical services.

3. Review and Finalization of New Projects

Proposals for new projects under Section C (Consultation and Technical Assistance) of this agreement shall be reviewed by the State. Upon consideration of the proposal, the State and Contractor must complete the Task Order Form (Appendix I). Both the State and the Contractor have the right to approve or deny any Task Order submitted to the other party. The finalized Task Order document will be submitted to the State for final approval and be signed by the Contractor, the State Authorized Representative, and the DVHA Business Office. The Task Order must indicate: scope, source of funds, payment provisions, points of contact, ownership of data and any applicable data use agreement, and project specifics. Each Task Order must be approved before any work shall begin. The State will not pay for services that are not previously approved in a Task Order. The State Authorized Representative and the DVHA Business Office have final authority over whether or not a Task Order is accepted and initiated under this agreement.

Changes to a Task Order shall be accomplished by written modification as agreed to by both parties and will be reflected in a new Task Order.

4. Project Deliverables

At the conclusion of a project assignment, the final deliverables/products prepared in accordance with what was agreed upon in the executed Task Order document will be submitted to the State. Acceptance of the deliverables/products by the State shall represent the Contractor's fulfillment of the project assignment. The State will have sixty days to acknowledge the final deliverables/products or to reject them. Rejection of the final deliverable regarding research projects will not be based on the failure to achieve particular results.

5. Work Product Ownership and Data Use

Notwithstanding the provisions in Attachment F, paragraphs 10 and 12, the parties agree to discuss in the context of each project assignment the ownership and use of the data, research, and other material (to be referred to as "data") collected or produced in connection with the Contract. Before the approval of a consultation or technical assistance project, the parties will agree on how the Contractor will use or disclose the data and whether the Contractor will be permitted to retain the data for use at a later date or for other purposes. The parties acknowledge the principles of academic freedom, the Contractor's general obligation to publish the results of its research, and the need to adhere to state and federal laws and maintain the confidentiality of individually identifiable information.

II. STATE DUTIES

The State shall operate a Medicaid program that is in compliance with applicable State and federal requirements.

The State retains responsibility for maintaining and managing the records of State and for responding to public records requests pertaining to such records.

The State will provide work space and administrative support to the Chief Medical Officer (CMO) and the Medicaid Medical Director at its facilities at 312 Hurricane Lane, Williston, Vermont, or any location in which the State's operations may move to during the contract period. In addition, the State will supply all computing and telecommunications equipment, along with supplies such as manuals, books, subscriptions, etc., to be used by the CMO and Medicaid Medical Director in fulfilling Contractor's responsibilities to the State; this equipment must be returned to the State at the conclusion of the contract or termination of the CMO or Medicaid Medical Director positions. This equipment will only be provided to the CMO and Medicaid Medical Director when they are on-site at State facilities, with the exception of mobile devices such as cell phones, which may be issued at the discretion of the DVHA Commissioner.

The State will employ other State staff who will assist the CMO and Medicaid Medical Director in the performance of their duties.

III. OTHER

A. Removal of Personnel from Contract

The Commissioner of DVHA, along with the Secretary of the Agency of Human Services (AHS) shall have authority to request the immediate removal from the contract of any personnel for cause or non-cause, including, but not limited to: negligent or willful misconduct that is injurious to beneficiaries; conviction of a felony, or any material breach of any part of this contract, or in the case of a physician, the revocation, restriction, or suspension of the physician's license to practice medicine in Vermont or in any other

jurisdiction in which the physician is so licensed for any period of time. Upon removal of a person for cause, and with respect to that person, the State shall have no further payment obligation to the Contractor. The State shall reimburse the Contractor for actual services rendered and any pre-approved, non-refundable expenses incurred prior to the removal of said personnel.

If the State is dissatisfied with the performance of consultation and technical assistance personnel working under this agreement, it may take reasonable steps in consultation with Contractor to notify the personnel of its concerns and work with that employee to correct the problem. If the State remains dissatisfied, the State and Contractor will work together to arrange for a reassignment. Contractor retains the exclusive right to discipline or terminate Contractor employment in accordance with their policies.

B. Employment Clauses

Contractor shall not include any clause in its agreements with the Contractor personnel that would prevent such personnel from accepting employment with the State, or entering into a contractual arrangement with the State or a contractor of the State following the employee's termination of his or her relationship with the Contractor or termination of this agreement.

C. Location of Personnel

Staff supporting the State may be at times asked to work in AHS administrative offices depending on the nature and requirements of the work. At a minimum, staff must be available for meetings in AHS office locations.

D. Security and Electronic Data

Regarding the Contractor's Consultation and Technical Assistance activities, as described in Section I. C., for work using State-provided PHI with identifiers, the Contractor will adhere to the National Institute of Standards and Technology (NIST) Special Publication 800-53 rev 3 or higher moderate baseline security controls, (http://csrc.nist.gov/publications/nistpubs/800-53-Rev3/sp800-53-rev3-final_updated-errata_05-01-2010.pdf with the exception of CA-6 Security Authorization). Due to the extremely sensitive nature of the data, the Contractor will develop data security standard operating procedures to be reviewed annually with all staff and faculty engaged in this work.

F. Actions against Contractor Personnel

The Secretary of AHS and the Commissioner of DVHA shall be immediately notified if any personnel working under this contract have a license revoked, suspended or restricted by any state; or the provider loses board certification or eligibility status.

G. Institutional Review Board Approval

Research may include designs for which informed consent must be obtained by participants. Any such proposal must be approved by the Commissioner of DVHA, if applicable, by Contractor's institutional review board, and, if applicable, by the Agency of Human Services' institutional review board.

H. Request for Approval to Subcontract

Per Attachment C, Section 15, if the Contractor chooses to subcontract work under this agreement, the Contractor must first fill out and submit the Request for Approval to Contract form (Appendix I) in order to seek approval from the State prior to signing an agreement with

any third party. Upon receipt of the Request for Approval to Contract form, the State shall review and respond to the request within five (5) business days. Under no circumstance shall the Contractor enter into a sub-agreement without prior authorization from the State. The Contractor shall submit the Request for Approval to Contract form to:

Meaghan Kelley
Department of Vermont Health Access
312 Hurricane Lane
Williston, VT 05495
Meaghan.Kelley@state.vt.us

IV. POINT OF CONTACT

State of Vermont State Agency of Human Services
Mark Larson, Commissioner
Department of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, VT 05495
Phone: 802-879-5952
Authorized Representative of the State

State of Vermont
Kelly Gordon, Project and Operations Director
Department of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, VT 05495
Phone: 802-879-5905
Authorized Representative of the State

Contractor's Technical Lead
Richard "Mort" C. Wasserman, MD, MPH
Professor, Department of Pediatrics
Vermont Child Health Improvement Program
University of Vermont, College of Medicine
1 South Prospect St.
Burlington, VT 05401
Phone: 802-656-3046

Contractor's Administrative Lead
Nicholas Brightman
Research Administrator
Sponsored Project Administration
217 Waterman Building
85 South Prospect Street
University of Vermont
Burlington, Vermont 05405-0160
Phone: 802-656-3360
Fax: 802-656-8604

Liaison
Patricia Berry, MPH
Research Associate
Department of Pediatrics,
Director of Policy and State Relations
Vermont Child Health Improvement Program
University of Vermont
College of Medicine
UHC Campus, St Joseph's 7
South Prospect St
Burlington, VT 05401
Phone: 802-656-8320

PROJECT #1

State Chief Medical Officer and State Medicaid Medical Director

1. Description

The Contractor will recruit, hire, and employ two qualified physicians subject to the approval of the State, one to serve as the State's Chief Medical Officer (CMO) and the other to serve as the State's Medicaid Medical Director. The CMO position will be staffed between 0.75 and 1.0 FTE. The Medicaid Medical Director will be staffed as 1.0 FTE. The definition of 1.0 FTE is a minimum of 37.50 hours per 40 hour week. The definition of .75 FTE is 28.125 hours per 40 hour week. The State Authorized Representative has the final authority to determine the FTE limits within the annual budget. Responsibilities for each position are outlined below in "Section 2, Responsibilities".

2. Responsibilities

The Chief Medical Officer shall:

- a. Participate in policy review and development, planning, and implementation, including the development of methods to achieve ongoing improvement in managed care operations and programs.
- b. Particularly in the absence of the Medicaid Medical Director or during periods for which additional medical director expertise is needed, support the pre-admission, concurrent review and retrospective review processes, commonly referred to as utilization review. Specifically, render a professional opinion regarding medical necessity using evidence-based literature when available, accepted local standards, and/or Contractor's expert medical opinion. The CMO shall draw upon other Contractor internal resources and expertise to render a professional opinion regarding medical necessity in areas for which the CMO determines additional expertise is needed.
- c. Consult with and advise managed care staff and operations across the Agency of Human Services to achieve ongoing improvement in the integration of behavioral and physical health.
- d. With support from the State and/or other AHS staff, assist with identifying cost-effective alternatives to traditional Medicaid care and cost containment approaches.
- e. Provide medical expertise in critical areas of managed care operations, including but not limited to assisting State to identify and develop best practices in prevention, treatment of multiple co-morbid conditions, and chronic care management.

- f. In collaboration with the Deputy Commissioner of Health Services and Managed Care, serve as a State medical liaison with other departments of the AHS and their medical directors.
- g. Provide clinical leadership in developing an integrated system of care that includes managed care operations, as well as community providers throughout the State.
- h. Advise State staff in identifying and developing clinical initiatives.
- i. In collaboration with the Deputy Commissioner of Health Services and Managed Care, assure coordination of clinical activities at State in a manner that is consistent with applicable state and federal laws, licensing requirements, and accreditation standards.
- j. Participate in State or AHS committees such as utilization review, quality improvement, pharmacy and therapeutics review, and/or joint research projects, as requested.
- k. Identify areas of research in public sector healthcare programs and participate as needed and agreed upon by both parties.
- l. Assure timely completion of all necessary Medicaid documentation as required by state and federal standards.
- m. Organize and direct the Clinical Utilization Review Board (CURB).

The Medicaid Medical Director shall:

- a. Be directly supervised by the Chief Medical Officer and participate as requested by the CMO or State in policy development, planning, and implementation, including development of methods to achieve ongoing improvement in managed care operations and programs.
- b. Collaborate with the CMO and State staff to identify areas of opportunity and/or concern in the clinical programs.
- c. Support the pre-admission, concurrent review and retrospective review processes, commonly referred to as utilization review. Specifically, render a professional opinion regarding medical necessity using evidence-based literature when available, accepted local standards, and/or Contractor's expert medical opinion. The Medicaid Medical Director shall draw upon other Contractor internal resources and expertise to render a professional opinion regarding medical necessity in areas for which the Medicaid Medical Director determines additional expertise is needed.
- d. Request/seek additional clinical information necessary from the treating and/or referring provider in order to complete reviews in a timely manner.
- e. Assure completion of medical necessity reviews in accordance with all applicable state and federal laws.
- f. When evidence-based national criteria for medical necessity are unavailable, research, recommend and/or review any clinical criteria that have been developed by State. If necessary, seek out subject matter experts for consultation.
- g. Assist the Chief Medical Officer as requested.

Both the Chief Medical Officer and the Medicaid Medical Director shall:

- a. Uphold State values and standards of conduct, including:
 - i. Demonstrating integrity, respect, and responsiveness when working with patients, families, community partners, and internal staff.

- ii. Communicating a positive image about State to the public.
- b. Assure completion of medical necessity reviews in accordance with all applicable State and federal laws.
- c. Participate in and support fair hearings, grievances, appeals and other administrative or judicial matters relative to State's clinical operations.
- d. Provide legislative testimony or supporting materials as requested by the Commissioner of State.
- e. Represent the State at various national and regional conferences and meetings as authorized by the Commissioner of State.

3. Conditions of Employment

- a. The Medicaid Medical Director will serve full-time, which is defined under this agreement as a minimum of 37.50 hours per 40 hour work week, unless otherwise approved by the State.
- b. The CMO position shall be staffed between .75 FTE and 1.0 FTE. The definition of 1.0 FTE under this agreement is a minimum of 37.50 hours per 40 hour work week. The definition of .75 FTE under this agreement is a minimum of 28.125 hours per 40 hour work week.
- c. When serving as the CMO and Medicaid Medical Director, those persons will work on behalf of and under the direction and supervision of State. The CMO and Medicaid Medical Director will arrange their work schedules, vacation days, and paid and unpaid holidays to coordinate with the daily business hours and calendar of State.
- d. Except in the case of unforeseeable emergencies, the CMO and Medicaid Medical Director will arrange their work schedules, vacation days, and paid and unpaid holidays to ensure at least one of these positions is present to provide State with medical leadership for all clinical activities within State including prior authorizations, grievance and appeals reviews, care management and other activities as required by Medicaid or assigned by the Commissioner of DVHA.
- e. The Medicaid Medical Director will be directly supervised by the CMO.
- f. For the services of the CMO and Medicaid Medical Director, State will pay the costs set forth in Attachment B.
- g. The Contractor will obtain State's agreement before CMO or Medicaid Medical Director incumbents are replaced by any other individuals.
- h. The CMO and Medicaid Medical Director will each be considered full-time employees of the Contractor for purposes of salaries, benefits, and all economic terms and conditions of employment, unless otherwise approved by the State. They shall remain on the Contractor's payroll and be entitled to participate in the salary and benefit programs of the Contractor that pertain to retirement, health insurance, dental insurance, disability insurance, and tuition remission.
- i. The CMO and Medicaid Medical Director will receive all compensation from the Contractor and will receive no additional compensation from State.
- j. The Contractor will pay all salary and benefits to the CMO and to the Medicaid Medical Director and all related expenses to third parties, including payroll related taxes and FICA. The Contractor will withhold income and other payroll taxes and deductions as appropriate.

- k. The CMO and Medicaid Medical Director each will be jointly appointed as members of the faculty in one University of Vermont College of Medicine (COM) department. They will coordinate and seek collaboration within the COM and with other Contractor entities, as appropriate. The Contractor's Principal Investigator (PI), or designee, will conduct performance evaluations in accordance with the Contractor's policies or as otherwise agreed by State. DVHA's Commissioner will participate in the evaluation process, including providing input to the "Overall Expectations" section of the Contractor's form for reappointment, meeting with the CMO and Medicaid Medical Director, and consulting with the PI (or designee). The DVHA Commissioner will advise the PI (or designee) of any deficiencies in performance and related corrective actions to be taken as a result of the CMO or Medicaid Medical Director's service at the State.
- l. If State is dissatisfied with the performance of the CMO or Medicaid Medical Director, it may take reasonable steps in consultation with the Contractor to notify the CMO or Medicaid Medical Director of its concerns and work with that employee to correct the problem. If State remains dissatisfied, State and the Contractor will work together to arrange for the recruitment and appointment of a replacement acceptable to State, with all agreed upon expenses to be borne by State. The Contractor retains the exclusive right to discipline or terminate the Contractor's employment of the CMO or Medicaid Medical Director in accordance with the Contractor's policies.
- m. State will advise the CMO and Medicaid Medical Director of all its organizational rules, regulations, policies, standards of conduct, and safety procedures and the CMO and Medicaid Medical Director will conform accordingly, with respect both to their own performance and to any responsibilities they may have at State.
- n. Each physician furnished by the Contractor must:
 - i. Hold an unrestricted license to practice medicine in the State of Vermont, or hold an unrestricted license to practice medicine in another state and actively pursue an unrestricted license in Vermont through the Vermont Medical Practice Board;
 - ii. Be selected by the Contractor and approved by the Commissioner of DVHA and the Secretary of the Agency of Human Services; and,
 - iii. Serve in a full-time capacity as defined for University faculty with full-time appointments, unless otherwise approved by the State.
- o. The Commissioner of DVHA shall be entitled to interview all final candidates and, with the Secretary of the Agency of Human Services, shall have the ultimate decision whether to accept, reject, or retain any candidate.

4. Gaps in Service Delivery

Either party will notify the other if a gap in Chief Medical Officer or Medicaid Medical Director services is anticipated or occurs.

The Contractor will meet with the State in a timely manner to determine the type and extent of CMO or Medicaid Medical Director services that the Contractor shall provide during the anticipated or actual absence. The obligation to notify and meet State will be triggered by either the CMO's or the Medicaid Medical Director's resignation or by the CMO's or Medicaid Medical Director's absence of more than three consecutive weeks.

5. Medical Records

The CMO and the Medicaid Medical Director must:

Maintain and update clinical documentation consistent with the State's records policies and procedures and relevant state and federal law, including Medicaid requirements as well as the documentation standards in place at State;

Maintain records related to the clinical program only in the State office; and,

Prepare any compliance reports or take any other action necessary to comply with HIPAA and its implementing regulations.

6. State and Federal Programs

The CMO and Medicaid Medical Director shall cooperate with the State's efforts to comply with applicable State and federal program requirements related to medical care (e.g., Medicaid and Medicare). If the CMO or Medicaid Medical Director has questions regarding the applicability of a State or federal program requirement, the CMO or Medicaid Medical Director shall inform the State of the question and the State and the Contractor, at the State's direction, will pursue resolution as necessary with the appropriate agency.

7. Additional Responsibilities

CMO and Medicaid Medical Director responsibilities include consultation and technical assistance for concurrent and retrospective reviews, commonly referred to as utilization reviews, for inpatient mental health services and detoxification services. These services will be performed at no additional cost to the State.

Contractor will provide qualified personnel to compare requests for medical services with established criteria deemed appropriate for such services, review specific cases for consistency with established criteria, and render a professional opinion to the State regarding appropriateness of requested services. Contractor will provide the State with a recommendation regarding appropriateness of requested services within one (1) business day of receiving all required information. The State is responsible for all final decisions.

Contractor also will provide consultation and technical assistance for care management activities for patients receiving psychiatric and/or substance abuse treatment as part of the "CMO and Medicaid Medical Director's regular responsibilities.

Project #2

1. Description

Contractor will use the State's Department of Vermont Health Access (DVHA) pharmacy claims data to evaluate the Vermont Academic Detailing (VTAD) Program.

The goal of the evaluation project is to determine the impact of the VTAD Program on local prescribing practices. The evaluation will compare observed prescribing to what may be considered ideal prescribing both before and after the AD intervention and also between prescribers who have and have not received the intervention.

2. Responsibilities

The Contractor shall evaluate the State's pharmacy claims information that has been submitted to the State, and that DVHA or its pharmacy benefits manager has de-identified with respect to individually identifying patient information. This data will include the following elements:

- a. The data will be stored on a secure server at the Fletcher Allen Health Care/University of Vermont. The analyses will occur at the Office of Primary Care, the Contractor's School of Medicine, using STATA 10 (Stata Corporation, College Station, TX).
- b. The data will be used to evaluate the impact of the VTAD Program on local prescribing behavior. Specifically, the evaluation will help assess whether the VTAD is helping Medicaid patients by improving the use of evidence-based prescribing approaches.
- c. The results of each evaluation project will be shared with the State in a written summary.
- d. The results of the evaluation may be published in a peer-reviewed medical journal and in the Vermont Academic Detailing Program's Annual Report.
- e. The data will not be used for any purposes other than those described above.
- f. The information will be retained for a period of no more than two months unless Contractor and State agree to other evaluation projects permitted by law.

This project is a no-cost project, i.e., the State is not required to reimburse Contractor or any team members for the activity they undertake in connection with this project.

- 4. By deleting beginning on page 14 of 31 of the base agreement and as previously amended, Attachment B (Payment Provisions) and substituting in lieu thereof the following:**

ATTACHMENT B PAYMENT PROVISIONS

The maximum dollar amount payable under this agreement is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services specified in Attachment A, or services actually performed, up to the maximum allowable amount specified in this agreement. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are included in this attachment. The following provisions specifying payments are:

I. Principal Investigator

Dr. Richard Wasserman will be Principal Investigator (PI) for all projects and activities approved under this Contract. The PI will provide oversight, technical assistance, and consultation and will ensure project integrity and project completion on time and within budget. Costs for PI responsibilities will be paid quarterly based upon actual expenses within the State Fiscal Year maximum amount.

II. Project #1: Chief Medical Officer and Medicaid Medical Director

Costs for the State Chief Medical Officer (CMO) and State Medicaid Medical Director will not exceed \$1,343,806.86 for the contract period. Costs will include salary, fringe, operating (including expenses, in-state and out-of-state travel), and indirect costs. Out-of-state travel expenses for the CMO and Medicaid Medical Director must be approved in advance of the travel by the Commissioner of DVHA; the Contractor will be reimbursed for mileage, food, and lodging expenses at the rates established by the Contractor.

The State will pay the Contractor a maximum of \$153,145.55 per quarter for the services provided in Attachment A, Section I.B, and the Project #1 description in SFY14. The State will pay the Contractor a maximum of \$158,833.27 per quarter for the services provided in Attachment A, Section I.B, and the Project #1 description in SFY15. Payment by the State is contingent upon receipt and approval of a statement of the services provided by the CMO and Medicaid Medical Director in the previous quarter or receipt and approval of the document as outlined in the Prorated Scenario or Gap in Service Scenario in the previous quarter(s). The State Authorized Representative reserves the right to adjust funding between the CMO and MMD salaries dependent upon the available staffing of both positions, not to exceed the maximum budgeted amount for the CMO/MMD per each state fiscal year as reflected in the budget table below.

Proration Scenario

This quarterly payment will be prorated for the quarter in which the CMO or Medicaid Medical Director begins working for the State, if the CMO or Medicaid Medical Director begins after the beginning of the quarter. In the instance of a quarter in which a prorated payment is necessary, the percent of effort during the period shall be documented by the Contractor and submitted to the State to be included with the quarterly invoice.

Gap in Service Scenario

In the event of a gap in service from either the CMO or Medicaid Medical Director, the Contractor may bill the State for agreed upon reasonable effort and expenses related to recruitment and employment of the new CMO or Medicaid Medical Director. Any effort and expenses attributed to recruitment and employment of these two positions shall be documented by the Contractor and submitted to the State to be included with the quarterly invoice.

State and Federal Regulations

The CMO and Medicaid Medical Director will assure completion of medical necessity reviews in accordance with all applicable State and federal regulations regarding Medicaid clinical reviews. The CMO and Medicaid Medical Director will work at the direction of the State to complete medical necessity reviews within a timeframe that enables the State to adhere to all applicable State and federal laws as reflected in the following Code of Federal Regulations (CFR):

42 CFR §438.210 (d) titled "Timeframe for Decisions", and 42 CFR §438.408 (b) titled "Specific Timeframes".

These can be found online from the Electronic Code of Federal Regulations website at:

<http://ecfr.gpoaccess.gov>

Or the direct internet link to Title 42:

http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=7ef067068fd5790636ada6d541f3976e&c=ecfr&tpl=/ecfrbrowse/Title42/42cfrv4_02.tpl

The deadlines associated with State regulations concerning Medicaid clinical reviews mirror the deadlines found in Federal regulations. For reference, they can be found at:

<http://humanservices.vermont.gov/on-line-rules/dvha/medicaid-covered-services-7100-7700/view>

If the State is unable to adhere to the requirements of state and federal laws due to a delay in the completion of medical necessity reviews by the CMO or Medicaid Medical Director, the Contractor will forfeit \$2,000 for the first such delay, and \$5,000 for each instance of all subsequent delays (not \$5,000 aggregate.) Such assessment shall not be made to the extent that the failure, in the State's judgment, reasonably results from:

- Unforeseeable catastrophic events experienced at the Contractor local and corporate facilities,
- Unforeseeable catastrophic events experienced by State which have a material effect on the Contractor, or;
- Complying with any directions of the State or its employees regarding changes to the scope of work.

Calculating CMO Salary at Less Than 1.0 FTE

Reimbursement for the CMO will be based on the full-time equivalency (FTE) of the CMO. The budget for this agreement assumes a 1.00 FTE for this position. In the event a CMO is hired to be available at any less than 1.00 FTE, the Contractor shall bill at a rate based upon the following formula: the CMO's full time annual salary x the percent Full Time Equivalency. 1.0 FTE is defined as a minimum of 37.50 hours per 40 hour work week.

For example, if the CMO's annual salary is \$160,000.00 and their FTE is 0.85, the Contractor will base their invoices on an annual salary of \$136,000.

III. All New Projects

Each individual project as defined in Attachment A, Section C, shall require a separate budget, payment provisions for funds needed to carry out the project, and performance measures and guarantees to be determined through a Task Order. All budgets, source of funds, specific payment provisions, and performance measures and penalties must be approved by the Authorized Representative of the State through a Task Order prior to the start of work per the requirements set forth in Section C of Attachment A. The budget will include direct and indirect costs as required for the project.

Payment provisions for individual projects may be either on a fixed-price per deliverable or cost reimbursement basis as mutually agreed. Funding sources for Special Projects are to be determined based on available funding sources. Work shall not be performed under Special Projects if funding is not clearly identified and approved in a Task Order. Projects shall not exceed the maximum amount set forth in the budget table within this Attachment B.

The State will make payments to the Contractor upon receipt and approval of signed invoices to the State in accordance with the budget line items specified in the budgets for the individual projects as defined in the Task Order Form.

In all cases, should the parties agree to terminate the Contract, in whole or in part, prior to its completion, the State shall reimburse the Contractor for all approved unreimbursed expenses and non-cancellable encumbrances reasonably or necessarily made prior to the effective date of termination, such reimbursement, in combination with prior payments, not to exceed the total specified for the Contract or project. Conversely, Contractor shall refund any amount paid by State in excess of all expenses and non-cancellable encumbrances reasonably or necessarily made prior to the effective date of termination. In the event of early termination, Contractor shall provide State with copies of work in progress under the agreement. Upon notice of termination contractor will stop all work unless otherwise directed by the Commissioner of DVHA.

All invoices shall be submitted quarterly. The State will not pay invoices if not received within six months of the delivery of services or contract completion

The Contractor will submit a signed and dated bill/invoice for services rendered under this agreement. A separate invoice shall be submitted for Section I (Principal Investigator), Section II (Project #1: Chief Medical Officer and Medicaid Medical Director), and for each Special Project initiated by a Task Order. The invoices shall be printed on the Contractor's official letterhead, reference this contract number, include the date of invoice, remit address, the total amount billed, be signed off by an authorized representative of the Contractor, and sent to:

Business Office
Department of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, VT 05495

The State will remit all payments to:

Grant and Contract Administrative Services
223 Waterman Building
University of Vermont
Burlington, VT 05405

SFY13 10.1.12-6.30.13			
	PI	MD and CMO (Includes billed Technical and Consulting)	Special Projects
Grand Total	\$28,529.43	\$96,691.57	\$3,216.02
SFY13 Maximum Amount			\$128,437.02
SFY14 7.1.13-6.30.14			
	PI	MD and CMO	Special Projects
Total Salary and Fringe	\$28,741	\$440,513.08	
Total Operating		\$18,350.00	
Total Indirect	\$9,628.50	\$153,719.13	
Grand Total	\$38,369.50	\$612,582.21	\$181,048.29
SFY14 Maximum Amount			\$832,000.00
SFY15 7.1.14-6.30.15			
	PI	MD and CMO	Special Projects
Total Salary and Fringe	\$28,741	\$456,955.68	
Total Operating		\$18,350.00	
Total Indirect	\$9,628.50	\$159,227.40	
Grand Total	\$38,369.50	\$634,533.08	\$159,097.42
SFY15 Maximum Amount			\$832,000.00
Contract Maximum Amount			\$1,792,437.02

5. By adding to the base agreement, Attachment D, Modifications of Customary Provisions, which is an attachment to this amendment beginning on page 18 of 27.
6. By deleting beginning on page 21 of 31 of the base agreement, Attachment E, Business Associate Agreement, and substituting in lieu thereof the following Attachment E, which is an attachment to this amendment beginning on page 19 of 27.
7. By adding to the end of the base agreement, Appendix I (Required Forms), which is an attachment to this amendment beginning on page 26 of 27.

**STATE OF VERMONT
AMENDMENT TO PERSONAL SERVICES CONTRACT
UNIVERSITY OF VERMONT**

**PAGE 17 OF 27
CONTRACT #23099
AMENDMENT #4**

This amendment consists of 27 pages. Except as modified by this amendment and any previous amendments, all provisions of this contract, (#23099) dated October 1, 2012 shall remain unchanged and in full force and effect.

STATE OF VERMONT	CONTRACTOR
DEPARTMENT OF VERMONT HEALTH ACCESS	UNIVERSITY OF VERMONT

MARK LARSON, COMMISSIONER DATE

JENNIFER GAGNON, ASST. VP RESEARCH ADMIN DATE

ATTACHMENT D

**MODIFICATION OF CUSTOMARY PROVISIONS
OF
ATTACHMENT C, ATTACHMENT E, or ATTACHMENT F**

1. Requirements of other Sections in Attachment E are hereby modified:

By deleting in Attachment E, number 2, and replacing with the following number 2:

2. Identification and Disclosure of Privacy and Security Contacts. Within ten days of the execution of this agreement, Business Associate shall provide, to the Covered Entity's contract/grant manager, written notice of the names and contact information of those individuals to be contacted for any purposes related to privacy or security. This information must be updated any time it changes.

2. Reasons for Modifications:

The Contractor is not a covered entity under HIPPA and because they do not have a “HIPPA Privacy Officer” or “HIPPA Security Officer”, the language should be revised to reflect that the contract manager will be responsible for notifying the State of any breaches.

Approval:

Assistant Attorney General: _____

Date: _____

**ATTACHMENT E
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”) is entered into by and between the State of Vermont Agency of Human Services, operating by and through its **Department of Vermont Health Access** (“Covered Entity”) and **The University of Vermont** (“Business Associate”) as of **October 1, 2012** (“Effective Date”). This Agreement supplements and is made a part of the contract/grant to which it is attached. Covered Entity and Business Associate enter into this Agreement to comply with standards promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 (“Privacy Rule”), and the Security Standards, at 45 CFR Parts 160 and 164 (“Security Rule”), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), and any associated federal rules and regulations.

The parties agree as follows:

1. Definitions. All capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in 45 CFR Parts 160 and 164 as amended by HITECH and associated federal rules and regulations.

“Agent” means those person(s) who are agents(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).

“Breach” means the acquisition, access, use or disclosure of protected health information (PHI) which compromises the security or privacy of the PHI, except as excluded in the definition of Breach in 45 CFR § 164.402.

“Business Associate shall have the meaning given in 45 CFR § 160.103.

“Individual” includes a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

“Protected Health Information” or PHI shall have the meaning given in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Agency.

“Security Incident” means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.

“Services” includes all work performed by the Business Associate for or on behalf of Covered Entity that requires the use and/or disclosure of protected health information to perform a business associate function described in 45 CFR § 160.103 under the definition of Business Associate.

“Subcontractor” means a person or organization to whom a Business Associate delegates a function, activity or service, other than in the capacity of a member of the workforce of the Business Associate. For purposes of this Agreement, the term Subcontractor includes Subgrantees.

2. Identification and Disclosure of Privacy and Security Offices. Business Associate and Subcontractors shall provide, within ten (10) days of the execution of this agreement, written notice to the Covered Entity’s contract/grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer. This information must be updated any time either of these contacts changes.

3. Permitted and Required Uses/Disclosures of PHI.

3.1 Except as limited in this Agreement, Business Associate may use or disclose PHI to perform Services, as specified in the underlying grant or contract with Covered Entity. The uses and disclosures of Business Associate are limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the underlying agreement. Business Associate shall not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule if used or disclosed by Covered Entity in that manner. Business Associate may not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

3.2 Business Associate may make PHI available to its employees who need access to perform Services provided that Business Associate makes such employees aware of the use and disclosure restrictions in this Agreement and binds them to comply with such restrictions. Business Associate may only disclose PHI for the purposes authorized by this Agreement: (a) to its agents and Subcontractors in accordance with Sections 9 and 17 or, (b) as otherwise permitted by Section 3.

3.3 Business Associate shall be directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Covered Entity, and for impermissible uses and disclosures, by Business Associate's Subcontractor(s), of the PHI that Business Associate handles on behalf of Covered Entity and that it passes on to Subcontractors.

4. Business Activities. Business Associate may use PHI received in its capacity as a Business Associate to Covered Entity if necessary for Business Associate's proper management and administration or to carry out its legal responsibilities. Business Associate may disclose PHI received in its capacity as Business Associate to Covered Entity for Business Associate's proper management and administration or to carry out its legal responsibilities if a disclosure is Required by Law or if Business Associate obtains reasonable written assurances via a written agreement from the person to whom the information is to be disclosed that the PHI shall remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the Agreement requires the person or entity to notify Business Associate, within two (2) business days (who in turn will notify Covered Entity within two (2) business days after receiving notice of a Breach as specified in Section 6.1), in writing of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the purposes identified in Section 3 must be of the minimum amount of PHI necessary to accomplish such purposes.

5. Safeguards. Business Associate, its Agent(s) and Subcontractor(s) shall implement and use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. With respect to any PHI that is maintained in or transmitted by electronic media, Business Associate or its Subcontractor(s) shall comply with 45 CFR sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards) and 164.316 (policies and procedures and documentation requirements). Business Associate or its Agent(s) and Subcontractor(s) shall identify in writing upon request from Covered Entity all of the safeguards that it uses to prevent impermissible uses or disclosures of PHI.

6. Documenting and Reporting Breaches.

6.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI, including Breaches reported to it by a Subcontractor, as soon as it (or any of its employees or agents)

becomes aware of any such Breach, and in no case later than two (2) business days after it (or any of its employees or agents) becomes aware of the Breach, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.

6.2 Business Associate shall provide Covered Entity with the names of the individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of the Breach and any other available information that is required to be given to the affected individuals, as set forth in 45 CFR § 164.404(c), and, if requested by Covered Entity, information necessary for Covered Entity to investigate the impermissible use or disclosure. Business Associate shall continue to provide to Covered Entity information concerning the Breach as it becomes available to it. Business Associate shall require its Subcontractor(s) to agree to these same terms and conditions.

6.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce is not a Breach, as that term is defined in 45 CFR § 164.402, and therefore does not necessitate notice to the impacted individual(s), it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). When requested by Covered Entity, Business Associate shall make its risk assessments available to Covered Entity. It shall also provide Covered Entity with 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the PHI had been compromised. When a breach is the responsibility of a member of its Subcontractor's workforce, Business Associate shall either 1) conduct its own risk assessment and draft a summary of the event and assessment or 2) require its Subcontractor to conduct the assessment and draft a summary of the event. In either case, Business Associate shall make these assessments and reports available to Covered Entity.

6.4 Business Associate shall require, by contract, a Subcontractor to report to Business Associate and Covered Entity any Breach of which the Subcontractor becomes aware, no later than two (2) business days after becomes aware of the Breach.

7. **Mitigation and Corrective Action.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible use or disclosure of PHI, even if the impermissible use or disclosure does not constitute a Breach. Business Associate shall draft and carry out a plan of corrective action to address any incident of impermissible use or disclosure of PHI. If requested by Covered Entity, Business Associate shall make its mitigation and corrective action plans available to Covered Entity. Business Associate shall require a Subcontractor to agree to these same terms and conditions.

8. **Providing Notice of Breaches.**

8.1 If Covered Entity determines that an impermissible acquisition, access, use or disclosure of PHI for which one of Business Associate's employees or agents was responsible constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity, Business Associate shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When requested to provide notice, Business Associate shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. The cost of notice and related remedies shall be borne by Business Associate.

8.2 If Covered Entity or Business Associate determines that an impermissible acquisition, access, use or disclosure of PHI by a Subcontractor of Business Associate constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity or Business Associate, Subcontractor shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When Covered Entity requests that Business Associate or its Subcontractor provide notice, Business Associate shall either 1) consult with Covered Entity about the specifics of the notice as set forth in section 8.1, above, or 2) require, by contract, its Subcontractor to consult with Covered Entity about the specifics of the notice as set forth in section 8.1

8.3 The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than 60 calendar days after Business Associate reported the Breach to Covered Entity.

8.4 The notice to affected individuals shall be written in plain language and shall include, to the extent possible, 1) a brief description of what happened, 2) a description of the types of Unsecured PHI that were involved in the Breach, 3) any steps individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of what the Business Associate is doing to investigate the Breach, to mitigate harm to individuals and to protect against further Breaches, and 5) contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR § 164.404(c).

8.5 Business Associate shall notify individuals of Breaches as specified in 45 CFR § 164.404(d) (methods of individual notice). In addition, when a Breach involves more than 500 residents of Vermont, Business Associate shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR § 164.406.

9. Agreements with Subcontractors. Business Associate shall enter into a Business Associate Agreement with any Subcontractor to whom it provides PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity in which the Subcontractor agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI. Business Associate must enter into this Business Associate Agreement before any use by or disclosure of PHI to such agent. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of PHI. Business Associate shall provide a copy of the Business Associate Agreement it enters into with a subcontractor to Covered Entity upon request. Business associate may not make any disclosure of PHI to any Subcontractor without prior written consent of Covered Entity.

10. Access to PHI. Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity or as directed by Covered Entity to an Individual to meet the requirements under 45 CFR § 164.524. Business Associate shall provide such access in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for access to PHI that Business Associate directly receives from an Individual.

11. Amendment of PHI. Business Associate shall make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, whether at the request of Covered Entity or an Individual. Business Associate shall make such amendments in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for amendment to PHI that Business Associate directly receives from an Individual.

12. Accounting of Disclosures. Business Associate shall document disclosures of PHI and all information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Business Associate shall provide such information to Covered Entity or as directed by Covered Entity to an Individual, to permit Covered Entity to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any accounting request that Business Associate directly receives from an Individual.

13. Books and Records. Subject to the attorney-client and other applicable legal privileges, Business Associate shall make its internal practices, books, and records (including policies and procedures and PHI) relating to the use and disclosure of PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity available to the Secretary in the time and manner designated by the Secretary. Business Associate shall make the same information available to Covered Entity, upon Covered Entity's request, in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether Business Associate is in compliance with this Agreement.

14. Termination.

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity subject to Section 18.7.

14.2 If Business Associate breaches any material term of this Agreement, Covered Entity may either: (a) provide an opportunity for Business Associate to cure the breach and Covered Entity may terminate the contract or grant without liability or penalty if Business Associate does not cure the breach within the time specified by Covered Entity; or (b) immediately terminate the contract or grant without liability or penalty if Covered Entity believes that cure is not reasonably possible; or (c) if neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary. Covered Entity has the right to seek to cure any breach by Business Associate and this right, regardless of whether Covered Entity cures such breach, does not lessen any right or remedy available to Covered Entity at law, in equity, or under the contract or grant, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

15. Return/Destruction of PHI.

15.1 Business Associate in connection with the expiration or termination of the contract or grant shall return or destroy, at the discretion of the Covered Entity, all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity pursuant to this contract or grant that Business Associate still maintains in any form or medium

(including electronic) within thirty (30) days after such expiration or termination. Business Associate shall not retain any copies of the PHI. Business Associate shall certify in writing for Covered Entity (1) when all PHI has been returned or destroyed and (2) that Business Associate does not continue to maintain any PHI. Business Associate is to provide this certification during this thirty (30) day period.

15.2 Business Associate shall provide to Covered Entity notification of any conditions that Business Associate believes make the return or destruction of PHI infeasible. If Covered Entity agrees that return or destruction is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible for so long as Business Associate maintains such PHI. This shall also apply to all Agents and Subcontractors of Business Associate.

16. Penalties and Training. Business Associate understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of PHI and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by Covered Entity, Business Associate shall participate in training regarding the use, confidentiality, and security of PHI.

17. Security Rule Obligations. The following provisions of this section apply to the extent that Business Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity.

17.1 Business Associate shall implement and use administrative, physical, and technical safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312 with respect to the Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate shall identify in writing upon request from Covered Entity all of the safeguards that it uses to protect such Electronic PHI.

17.2 Business Associate shall ensure that any Agent and Subcontractor to whom it provides Electronic PHI agrees in a written agreement to implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of the Electronic PHI. Business Associate must enter into this written agreement before any use or disclosure of Electronic PHI by such Agent or Subcontractor. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of Electronic PHI. Business Associate shall provide a copy of the written agreement to Covered Entity upon request. Business Associate may not make any disclosure of Electronic PHI to any Agent or Subcontractor without the prior written consent of Covered Entity.

17.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an Agent or Subcontractor). Business Associate shall provide this written report as soon as it becomes aware of any such Security Incident, and in no case later than two (2) business days after it becomes aware of the incident. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate any such Security Incident.

17.4 Business Associate shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

18. Miscellaneous.

18.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the contract/grant, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the contract/grant continue in effect.

18.2 Business Associate shall cooperate with Covered Entity to amend this Agreement from time to time as is necessary for Covered Entity to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA.

18.3 Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.

18.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule and Security Rule, and the HIPAA omnibus final rule) in construing the meaning and effect of this Agreement.

18.5 As between Business Associate and Covered Entity, Covered Entity owns all PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity.

18.6 Business Associate shall abide by the terms and conditions of this Agreement with respect to all PHI it receives from Covered Entity or creates or receives on behalf of Covered Entity even if some of that information relates to specific services for which Business Associate may not be a "Business Associate" of Covered Entity under the Privacy Rule.

18.7 Business Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual's PHI. Business Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Reports or data containing the PHI may not be sold without Agency's or the affected individual's written consent.

18.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for Business Associate to return or destroy PHI as provided in Section 14.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 11 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

APPENDIX I – REQUIRED FORMS

Task Order

Contractor Name:

Agreement Number:

Amount Requested for Approval:

Scope of Work to be Performed:

Budget (Including Source of Funds):

Deliverables and Performance Measures:

Approvals:

State of Vermont

Contractor

Signature

Signature

Date

Date

**Department of Vermont Health Access
Request for Approval to Subcontract**

Date of Request: _____

Original Contractor Name:	_____	Contract #:	_____
Address:	_____		
Phone Number:	_____		
Contact Person:	_____		
Agreement #:	_____	Signature:	_____

Subcontractor Name: _____

Address: _____

Phone Number: _____

Contact Person: _____

Scope of
Subcontracted Services: _____

Is any portion of the work being outsourced outside of the United States? **YES** **NO**
(Note to Business Office: If Yes, do not proceed further with approval until reviewed with Finance & Mgmt)

Dollar Amount of
Subcontracted Services: \$ _____

Date Range for Subcontracted
Services: Start: _____ End: _____

DVHA Contact Person:	_____	Signature:	_____
Phone Number:	_____		

Business Office Review

Comments: _____

Approval: _____ **Title:** _____ **Date:** _____

<p><i>Required: Contractor cannot subcontract until they receive this signed approval from the State of Vermont. On the reverse side of this form there is language that must be included by the contractor in all subcontracting agreements.</i></p>
